IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5876 OF 2006

Shri Hanmanta Timma Pujari since deceased through his L.R.s ..Petitioners.

V/s.

Shri Narhari Balku Kavade since deceased through his L.R.s ..Respondents.

Mr.A.P.Vanarse for petitioners.

Mr.Mandar Limaye for respondents.

CORAM : J.P.DEVADHAR, J.

DATED : 12TH JULY, 2007.

P.C. :-

1. Heard Mr.Vanarse, learned Advocate for the petitioners and Mr.Limaye, learned Advocate for the respondents.

2. Civil Suit No.1389/1978 filed by the respondents before the Civil Judge, S.D. Pune was decreed on 5th March, 1984 and all the defendants who are the petitioners herein, were directed to hand over possession of the suit land to the respondents. In the said order, Survey number of the suit property was erroneously shown as 66/5A. However, on application made by the respondents the same has been corrected as Survey No.66A/5 instead of 66/5A.

3. The petitioners filed Civil Appeal No.47/85 against the order dated 5th March, 1984 and in the said appeal the petitioners filed an application for amendment of the written statement to the effect that Survey No.66A/5 and Survey No.66A/8 are one the same and since a Notification has been issued under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ('the Slum Act' for short) on 12th April, 1984 declaring Survey No.66A/8 to be a slum area, the petitioners cannot be evicted from their premises. It was further contended that boundaries of both the properties are common and, therefore, both the Survey numbers are one and the same. The said application was rejected by the District Judge, Pune on 17th July, 2006. Challenging the said order the present petition is filed.

4. Admittedly, Survey No.66A/8 was declared as slum area on 12th April,1984 i.e. after the Civil Suit No.1389/78 was decreed on 5th March, 1984. By the decree passed on 5/3/1984 the petitioners who are in occupation of their tenements situated on plot bearing Survey No.66A/5 were directed to hand over possession of their premises to the respondents. Because plot bearing Survey No.66A/8 is declared to be slum area on 12/4/1984, the petitioners want to amend the written statement to contend that Survey No.66A/5 and 66A/8 relate to the same plot and

in view of the declaration dated 12/4/1984 the petitioners cannot be evicted.

5. Whether the plot on Survey No.66A/5 and 66A/8 are one and the same plot or not was not an issue raised in the suit till it was decreed. Therefore, the contention of the petitioners that the plot bearing Survey No.66A/8 and 66A/5 are one and the same and since plot on Survey No.66A/8 is declared to be slum area, the petitioners are protected, is totally different cause of action and is wholly unconnected with the reliefs claimed in the suit.

6. If at all the petitioners have any right in the light of the declaration made on 12th April, 1984, it is open to the petitioners to adopt independent proceedings in that behalf. In fact, the learned Advocate for the petitioners state that the petitioners have filed Regular Civil Suit No.458/07 before the Civil Judge, S.D. at Pune claiming protection in the light of declaration dated 12/4/1984.

7. Since the petitioners have already initiated independent proceedings claiming reliefs which they were seeking by amendment of the written statement, there is no reason to interfere with the order impugned in the

petition. Accordingly, writ petition is dismissed with no order as to costs.

(J.P. DEVADHAR, J.)